

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-820

February 3, 1999

BANGOR HYDRO-ELECTRIC COMPANY
Divestiture of Generation Assets
Request for Approval of Sale of
Generation Assets

ORDER APPROVING
STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

We approve the sale of generation assets from Bangor Hydro-Electric Company (BHE or Bangor Hydro) to Penobscot Hydro, LLC. We make findings to certify that the generating facilities should be granted Exempt Wholesale Generation (EWG) status by the Federal Energy Regulatory Commission (FERC). We also make findings that Maine law grants to BHE, or its predecessors, rights, privileges or immunities that are generation assets required to be divested.

As a condition of electric industry restructuring, BHE must, with limited exceptions, divest all generation assets and all generation-related business activities by March 1, 2000. P.L. 1997, ch. 316 *enacting* 35-A M.R.S.A. § 3204(1). BHE must divest in accordance with the plan submitted to and approved by the Commission.

By order dated June 17, 1998, the Commission approved BHE's divestiture plan. The plan was developed with the assistance of Reed Consulting Group. BHE and Reed developed an auction or bid process. The process included the opportunity to purchase the wholesale and retail functions of the Company including the "Bangor Hydro" name, sale of contract entitlements and the sale of certain transmission assets. During the spring and summer of 1998, BHE and Reed conducted the bid process.

On September 25, 1998, BHE selected PP&L Global Inc. as the winning bidder for most of the assets. BHE and PP&L Global entered into an Asset Purchase Agreement (APA) whereby BHE agreed to sell:

(1) BHE's hydro-electric facilities, BHE's rights and interest relative to the proposed Basin Mills project and Penobscot Hydro Co., Inc.'s (PHC, a wholly-owned subsidiary of BHE) 50% interest in the partnership known as Bangor-Pacific Hydro Associates that owns the West Enfield Hydro-Electric project;

(2) BHE's 8.333% interest (51.7 MW) in Wyman Unit No. 4 in Yarmouth; and

(3) certain "transmission" assets, including BHE's right to develop and utilize a second 345 kV tie-line with New Brunswick, BHE's rights and obligations under the "Hydro Quebec Agreements," which are the agreements other than the support agreements related to BHE's participation in the NEPOOL/Hydro Quebec interconnection, and BHE's rights to 100 MW of firm transmission service over the Maine Electric Power Company ("MEPCO") transmission line.

BHE (and its wholly-owned subsidiary, PHC), and PP&L Global executed the following ancillary agreements which are either attached or referenced in the APA:

1. The Assignment and Assumption Agreement (agreement provides that various contractual rights and obligations will be transferred from BHE or PHC to PP&L Global);

2. The Interconnection Agreement (agreement provides certain terms governing the operation after the sale of each party's assets to the extent they affect the operation of the other party's assets);

3. The Transitional Power Sales Agreement (agreement provides terms under which PP&L Global will sell output of wholly owned hydro units to BHE between the closing date and March 1, 2000);

4. The Equity Contribution Agreement (agreement obligates PP&L Global's parent to provide sufficient funds to PP&L Global to purchase assets);

5. The MEPCO confirmation Agreement (agreement provides for assignment to PP&L Global of BHE's rights to MEPCO transmission service);

6. The Hydro-Quebec Transfer Agreement (this agreement to be drafted and executed prior to closing will transfer to PP&L Global certain contractual rights held by BHE related to the NEPOOL/Hydro-Quebec interconnection);

7. The Separation Document (this document to be drafted and executed prior to closing will identify the actual point of separation between those assets which are being transferred to PP&L Global and those which are being retained by BHE);

8. HQ Transfer Agreement;

9. Memorandum of Understanding on Basin Mills Hydro Project Development;

10. Memorandum of Understanding on Transmission Project Development; and

11. Preliminary Form of Separation Document.

The proposed transfer to PP&L Global of PHC's partnership interest in Bangor-Pacific Hydro Associates is subject to the rights of Ogden Power Corporation, PHC's partner in Bangor-Pacific Hydro Associates. Specifically, Ogden holds a right of first refusal under the partnership agreement. If Ogden exercises the right, BHE will be obligated to transfer PHC's partnership interest to Ogden on substantially the same terms and conditions as the proposed sale to PP&L Global.

BHE rejected all bids for the diesel units, the Graham Station generation units, the water storage sites, the marketing function and name, and the power purchase agreements.

On October 21, 1998, BHE filed a petition seeking authorization to sell the generating assets to PP&L Global, Inc. or its wholly-owned assignee in accordance with the terms and conditions in the APA and various ancillary agreements. Sometime thereafter, PP&L Global, Inc. exercised its rights under the APA to designate Penobscot Hydro, LLC, an affiliate of PP&L Global, Inc., as the entity to which ownership of the assets will be transferred.

After providing notice and opportunity to intervene, the Examiner granted the petitions to intervene of the Public Advocate, Penobscot Hydro, LLC, and the late-filed petition of the Industrial Energy Consumer Group (IECG).

The First Amendment to the Petition filed on December 4, 1998 requested PUC certification that certain statutory rights being transferred to Penobscot Hydro, LLC, were necessary to the ownership or operation of certain hydro-electric generating units being transferred to Penobscot Hydro, LLC.

The Second Amendment to the Petition filed on December 23, 1998 requested that the Commission approve the retention by BHE of 11 diesel-fired generating units located at Bar Harbor, Eastport and Medway. For the units located in Bar Harbor and Eastport, BHE is requesting an exemption from the divestiture deadline because the units are needed for transmission support. For the units located in Medway, BHE is seeking a 3-year extension of the divestiture deadline pursuant to 35-A M.R.S.A.

§ 3204(3) and proposed Chapter 307 in order to improve the potential sale value of those units.

After discovery and technical and settlement conferences, BHE, Penobscot Hydro, LLC, and the Public Advocate filed a stipulation. The IECG does not oppose the stipulation. By the stipulation, the parties recommended that the Commission authorize the sale of assets to Penobscot Hydro, LLC.

The parties raised concerns about the future development of the proposed Basin Mills hydro project and BHE's option to participate in the ownership of the project. The concerns focused on the issue of whether the option constitutes a generation asset that BHE must divest by March 1, 2000. BHE negotiated the option in order to retain the possibility that it might receive value to offset some of its unrecovered investment in Basin Mills. The parties decided to assume that the option constituted a generation asset, but to urge the Commission to grant BHE an extension to 2004 to divest the asset, pursuant to 35-A M.R.S.A. § 3204(3).

The sale to a generator of the rights to develop the proposed 345 KV tie line with New Brunswick also raised concerns. The owner of such a transmission line fits the definition of a T&D utility under the Restructuring Act, 35-A M.R.S.A. § 3201(19). At this point, ownership issues have not been decided, and it is not clear what entity will own the line. The parties agree that the Commission's approval of the sale of the rights to develop the 345KV line does not constitute approval, acceptance or a finding regarding the lawfulness or consequences of any particular ownership structure of the 345KV line. At settlement conferences, it became clear that the parties do not view the sale of BHE's MEPCO entitlement to Penobscot Hydro, LLC, as presenting similar issues involving the possibility of ownership or control of a transmission asset and that therefore no special mention of the sale of the MEPCO entitlement was made.

The parties also recommended that the Commission grant BHE an extension to divest its diesel generators, make the necessary findings to certify BHE's generation assets as "eligible facilities" to attain EWG status, and make the necessary findings pursuant to 35-A M.R.S.A. § 3204(8).

By the stipulation, the record in this case includes BHE's prefiled testimony and the data responses by BHE. We have reviewed the record and find that the resolution of this case recommended by the stipulation is reasonable. Accordingly, we approve the stipulation.

We have reviewed the auction process and Bangor Hydro's decisions during that process. We find that Bangor Hydro pursued all reasonable means to reduce its potential stranded costs by its auction and sale of assets to Penobscot Hydro, LLC. Accordingly, we authorize the sale of assets to Penobscot Hydro, LLC pursuant to 35-A M.R.S.A. § 1101. To the extent the asset sale also involves the abandonment of property or service within the meaning of 35-A M.R.S.A. § 1104, the transaction is also approved pursuant to that section.

For tax efficiency reasons, instead of selling Penobscot Hydro Company, Inc., BHE will retain the corporation as a subsidiary and the subsidiary will sell its partnership interest in Bangor-Pacific Hydro Associates. To the extent that the partnership interested is a "voting security" as defined in 35-A M.R.S.A. § 707(1)(c), we approve the transfer of the partnership interest under 35-A M.R.S.A. § 708, the reorganization statute.

Bangor Hydro's investment in the redevelopment of the West Enfield Hydro-Electric facility was approved by the Commission in 1986. Re: Bangor Hydro-Electric Company, No. 86-16 (May 27, 1986). In that order, the Commission approved a stipulation which included a condition that the Commission approve a transfer of its subsidiary's partnership interest. We also approve the transfer pursuant to the Docket 86-16 Order.

The stipulating parties request the Commission to issue Exempt Wholesale Generation (EWG) findings with the Order Approving the Sale of Assets. Penobscot Hydro, LLC, plans to file applications for EWG determinations with the FERC. Because the facilities to be sold were reflected in rates on October 24, 1992, under federal law, the Maine Commission must certify that allowing the facilities to be eligible: (1) will benefit consumers; (2) is in the public interest; and (3) does not violate Maine law.

We have concluded that the transfer of the assets to Penobscot Hydro, LLC is in the public interest. Consumers will benefit by the implementation of the Legislature's requirements of separation of generation from transmission and distribution, as well as by the reduction in stranded costs. The assets are transferred because of state law, obviously not in violation of state law. Because the Restructuring Act separates generation from transmission and distribution and will remove generators from the definition of electric utility, allowing the transferred facilities to be eligible facilities: (1) will benefit consumers; (2) is in the public interest; and (3) does not violate Maine law.

During its 1998 session, the Maine Legislature passed a law authorizing utilities to convey their generation-asset-related rights, privileges and immunities which are required to be divested under the Restructuring Act. The new law, codified at 35-A M.R.S.A. § 3204(8), authorizes the transfer of generation-asset-related rights, privileges and immunities, but only after (1) the utility provides to the Commission a copy of the law granting the rights and a description of the proposed transfer and (2) the Commission specifically finds that the law grants rights, privileges or immunities that are generation assets required to be divested or that are necessary to the ownership or operation of generation assets required to be divested. On December 4, 1998, BHE provided a copy of laws that grant to BHE (or its predecessors) the rights, privileges or immunities that BHE believes are generation-asset-related and that BHE proposes to transfer to Penobscot Hydro, LLC.

Having examined the laws provided to the Commission by Bangor Hydro-Electric Company pursuant to 35-A M.R.S.A. § 3204(8), the Commission finds that the following statutory rights are necessary to the ownership or operation of certain generating assets being sold by BHE to Penobscot Hydro, LLC:

1. The Mill Act, 38 M.R.S.A. § 651; and
2. The Act to Amend and Make Valid the Organization of the Bodwell Water Power Company, and for other purposes, P.S.&L.1883, c. 279.

We find that BHE's ownership of its diesel-fired generating units in Bar Harbor and Eastport are necessary for BHE to perform its obligations as a transmission and distribution utility in an efficient manner. Accordingly, BHE is not required to divest its diesel-fired generating units in Bar Harbor and Eastport pursuant to 35-A M.R.S.A. § 3204(1).

We extend the deadline for BHE to divest its diesel-fired generating units in Medway until March 1, 2003. We find that extending the divestiture deadline for those units for three years is likely to improve their sale value. BHE is required to file a report with the Commission and all parties no later than March 1, 2002 analyzing its continued need to retain ownership of the diesel units in Medway.

As requested by the stipulating parties, to the extent that the Hydro-Quebec Transfer Agreement constitutes a "significant agreement or contract" within the meaning of 35-A M.R.S.A. § 3133-A, we issue BHE a certificate of public convenience and necessity approving the transaction.

In the event Ogden Power Corporation exercises its right of first refusal under the Bangor-Pacific Hydro Associates Partnership Agreement to require Penobscot Hydro Company, Inc. to transfer its partnership interest to Ogden rather than Penobscot-Hydro LLC on substantially the same terms and conditions as the proposed sale to Penobscot Hydro, LLC the sale to Ogden is hereby approved pursuant to 35-A M.R.S.A. § 1101, 35-A M.R.S.A. § 708, and the Commission's Order dated May 27, 1996 in Docket 86-16.

To the extent that BHE's continued participating in the ownership (or potential ownership) of the proposed Basin Mills Hydro project constitutes a generation asset or generation-related business, we extend the divestiture deadline to March 1, 2004. We find that extending the divestiture deadline for Basin Mills for four years is likely to improve the sale value of BHE's interest in the project. Pursuant to the stipulation in this case and notwithstanding the terms and conditions of the Basin Mills Memorandum of Understanding, BHE must relinquish or sell its option to acquire an equity interest, or any equity interest acquired in Basin Mills by exercising its option, no later than March 1, 2004.

Accordingly, we

O R D E R

That the sale of Bangor Hydro-Electric Company's assets to Penobscot Hydro, LLC, pursuant to the Asset Purchase Agreement entered into on September 25, 1998 between Bangor Hydro-Electric Company and PP&L Global, Inc., is authorized.

Dated at Augusta, Maine, this 3rd day of February, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

WELCH
NUGENT
DIAMOND

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.